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BEFORE THE

SURFACE TRANSPORATION BOARD

EX PARTE 705

HEARING ON COMPETITION IN THE RAILROAD INDUSTRY

SUBMISSION OF WRITTEN TESTIMONY

TOTAL PETROCHEMICALS USA, INC.

TOTAL PETROCHEMICALS USA, INC (TOTAL) is a U.S.-based producer of petrochemicals (including polypropylene, polyethylene, styrene and polystyrene), base chemicals and transportation fuels with production facilities in Texas and Louisiana. TOTAL is part of Total S.A., one of the world's top five publicly-traded, integrated oil and gas companies, with operations in more than 130 countries spanning all aspects of the petroleum industry, including oil and gas exploration, development and production. *Downstream operations include refining, marketing and the trading and shipping of crude* oil and petroleum products. In addition, Total is a market leader in the liquefied natural gas industry, and is helping to secure the future of energy through its commitment to developing renewable energies.

TOTAL runs its North American petrochemicals business with a focus on manufacturing excellence, based on world-scale plants and technologically advanced operations that manufacture petrochemicals for plastics and other industries. We produce plastics for use in everyday household items like food containers, furniture, carpets, and beverage bottles to name just a few. Many of our plastic products enter the commercial and industrial sectors as well, performing in critical applications from natural gas distribution and water pipelines to building insulation, medical packaging and lightweight automobile components such as fuel tanks and bumper beams.

Over the years, TOTAL has built some of the world's most competitive manufacturing sites, with scale and efficiencies rivaling any in other regions. In addition to world-scale operations, the success of our sites hinges on an efficient, safe, and cost effective transportation and distribution network that today moves product to hundreds of customer facilities all over North America. Of the annual volumes of TOTAL products moving by rail, 4 billion pounds per year are comprised of plastics pellets transported in covered hopper cars. TOTAL's customers receive the cars and use them for on-site storage until the contents are converted into finished goods by various processes. The cars are then released and transported back to TOTAL.

Due to insufficient competition in the rail industry, transporting products via rail often involves spotty service, unpredictable delivery and in recent years, skyrocketing freight rates, even in the midst of an economic downturn. Blessed with years of consolidation and the creation of regional monopolies and duopolies all over the country, railroads routinely price captive origins and destinations far above reasonable levels, directly compromising the ability of the affected businesses to compete in the global marketplace and to keep jobs in the U.S. The railroads then typically use the bulk of these excessive profits to fund massive intermodal capital projects designed to transport the resulting waves of imported goods back into U.S. markets. To make matters worse, today importers can choose their ports of entry into the United States based on areas with competitive rail service, and strategically avoid captive areas where railroads engage in noncompetitive pricing practices. Unfortunately, TOTAL's customers cannot pick up and move so easily.

Railroads have brought their monopolistic pricing power into full view over the last several years. In one recent example, an eastern railroad increased TOTAL's base rates almost 50% from 2007 to 2009. Included in these rates were captive lane increases of as much as 100%, resulting in revenue/variable cost (R/VC) ratios of 800% or more. This included an attempt of an increase by nearly

13% from already excessive rates in a recession year. As a consequence of these rate increases, TOTAL's ability to compete in certain eastern markets was impaired.

Class I railroads exhibit a variety of noncompetitive pricing behaviors. For example, railroads often negotiate based on their own interpretations of a "market rate." For them, a market rate for a particular lane of traffic is the highest rate that has been paid by any shipper into the receiver. Often times, this is independent of volume, which means that a shipper who has little or no traffic on a particular lane, and who may be willing to pay a higher hypothetical price for a lane they don't even utilize, ends up also setting the price for the high volume shipper on that same lane to the same receiver. In one TOTAL experience, while renewing a contract, the Class I railroad moved a rate up sharply without any negotiations, citing circumstances where another shipper accepted the much higher rate. The railroad insisted upon moving TOTAL to that new lèvel regardless of efficiencies, economies of scale, alternative transportation options or any other components of a normal, competitive environment.

In other cases, the Class I railroads' exercise of monopoly pricing power and the impact of their actions on the price of U.S. manufactured goods have driven companies out of markets or forced them to move their operations overseas, destroying U.S. jobs in the process. For example, in 2007 a TOTAL customer in California who processed plastic pellets for a packaging application announced the closure of their plant, citing lack of economic viability related in large part to raw material transportation costs. The material supply had come from either the eastern half of the U.S. or from the U.S. Gulf Coast. When faced with the potential shutdown, TOTAL requested a lower rate from the railroad in order to meet the customer's needs. The railroad declined. When the railroad was told that if the rate did not come down to a reasonable level, the business would move overseas, again the railroad would not adjust the price. The customer closed their plant in California and moved the site to China. As a result, jobs were lost in California, TOTAL lost a customer, and the carrier lost 300 carloads per year (presumably some was regained via import intermodal traffic).

Rate negotiations with Class I railroads are routinely contentious. Railroads assert their market dominance where they have it, and continue to increase rates with little regard to the impact such increases may have on business sustainability. Although remedies do exist through the STB, the infrequency of cases where shippers actually obtain relief serves to reinforce the railroads' nonchalance with regard to potential STB action. For TOTAL, during contract negotiations with a Class I railroad, TOTAL presented data demonstrating the railroad's overwhelming Revenue to Variable Cost ratio on the TOTAL portfolio of lanes. A railroad vice president stated they "don't care about Revenue to Variable Cost numbers." The railroad is run on market rate, not RVC, he exclaimed.

Class I railroad disregard of STB-established rate thresholds may be based on both business and practical perspectives. In order to bring a Large Rate Case, the shipper must incur years of inflated tariff rates, significant legal and consulting costs, and internal staffing demands, with potential exposure in the tens of millions of dollars. Few companies can make such investments, no matter the damage being done by the railroad's monopolistic price behavior. In addition, the outcome is not certain, even if seemingly straightforward. Carrier, Shipper, and the STB must pore over mountains of paperwork to discern fact from fiction, and relative data from obscure.

On the issue of market dominance, the burden of proof seems to be squarely on the shoulders of the shipper rather than being balanced between the parties. Railroads need only claim that competition exists because product can physically move in smaller truck loads to plastic converters, even though the industry-standard is railcars, with no regard for the suitability of such deliveries to the ongoing business between shippers and plastic converters. In a multi-billion pound commodity industry, bringing in the plastic pellets by wheelbarrow at the right price is deemed competitive, if railroad logic is to be followed. Ask customers, and another story emerges: Commodity plastic pellets are delivered in the U.S., overwhelmingly, by rail.

Class I railroads have also shown reluctance to compete directly for business where their own Class I competition has a foothold. In a recent case, TOTAL requested rates through bulk transloading terminals as an option to direct moves to the customer on another competing railroad. TOTAL was told by the Class I railroad that their internal policy is to not quote rates to bulk terminals that would truck around competitive railroad deliveries. This is a clear example of duopolistic behavior that results in an anti-competitive marketplace.

TOTAL and its Canadian customers enjoy competitive access (Canada Transportation Act, Section 127) that benefits the parties and facilitates open competition between two railroads. The regulation states that if an origin or destination is within 30 km (or a greater prescribed distance) from an interchange, then an inter-switching order may be made to give a second railroad access. At many Canadian destinations, TOTAL has a choice of utilizing the CP or the CN for delivery, including three customers in Hamilton, Ontario, and two in Edmonton, Alberta. It is a successful model that optimizes cost and service for all parties. The STB should seriously consider certain aspects of the Canadian solution as it considers policy changes to enhance rail competition.

In summary, it is evident to TOTAL that the market dominance routinely exercised by Class I railroads, coupled with unbridled increases and record profits, jeopardizes the very existence of manufacturing in the United States, at least the segments like TOTAL's that rely on rail service to deliver large volumes of commodity products. Going forward, as rail rates continue to climb, bulk commodity manufacturers must fight for survival. At TOTAL, we will continue to invest in the best technologies and lowest cost product solutions, fighting to keep our variable costs on par with the global competitive environment. To the extent necessary, in order to control runaway rail freight rates, we will ask the STB to intervene, but would much prefer to rely upon real rail competition to ensure reasonable rates. In the absence of rail competition, we respectfully ask that the STB consider measures to make the intervention process more accessible, balanced and less burdensome for all parties.

Respectfully submitted,

TOTAL PETROCHEMICALS USA, INC.

By Geoffroy Petit